PRIVY COUNCIL REPORT

GIAN SINGH & CO. LTD. v. BANQUE DE L'INDOCHINE

[P.C. (Lord Wilberforce, Lord Diplock, Lord Cross of Chelsea, Lord Kilbrandon and Sir Harry Gibbs) May 6, 1974]

[Privy Council — Appeal No. 26 of 1972]

Banking — Letter of credit — Payment on presentation of signed certificate — Signature alleged forgery — Whether negligent — Whether certificate complied with stipulations in letter of credit.

This was an appeal from the decision of the Court of Appeal, Singapore ([1972] 1 M.L.J. 146). The respondent bank opened an irrevocable documentary credit on the instructions of the appellant in favour of the beneficiary to finance the purchase of a fishing vessel built in Taiwan. Payment under the credit was to be made against presentation of a sight draft drawn on the appellant accompanied by other documents together with a certificate "signed by Balwant Singh, holder of Malaysian passport E-13276". Documents were presented to the bank under the credit including a document purporting to be signed by Balwant Singh on paper bearing the letter-head of the appellant and ending with the words: "I, Balwant Singh, Passport no. E-13276 issued at 11th November 1964 Gian Singh & Co. Ltd. Sd. Balwant Singh Director". Payment of a sight draft was made to the beneficiary. The appellant brought an action against the bank claiming that it had been wrongly debited in respect of the money paid to the beneficiary on the ground that the signature "Balwant Singh" was a forgery and, whether or not it was a forgery, that the certificate did not conform with the terms of the documentary credit. The trial judge held that the signature on the certificate was not a forgery and that the certificate complied with the terms of the credit and accordingly gave judgment in favour of the bank. The Court of Appeal reversed the finding of fact that the signature was not a forgery but held that the certificate nevertheless conformed with the requirements of the credit and dismissed an appeal by the appellant.

Held, dismissing the appeal: (1) there had been powerful circumstantial evidence corroborating the direct evidence that the signature on the certificate was a forgery and the Court of Appeal had been justified in reversing the trial judge's finding that it was not a forgery;

(2) the duty of an issuing bank to its customer in relation to a documentary letter of credit was, by itself or its agent, to examine the documents presented to it with reasonable care to ascertain that they appeared, on their face, to be in strict accordance with the terms and conditions of the credit; the fact that it failed to detect that a document was a forgery did not prevent it from recovering from its customer; in the present case the certificate appeared on its face to be a certificate signed by Balwant Singh and the signature appeared to correspond with that on the passport produced to the notifying bank; the letter of credit did not require that the certificate should be the certificate of Balwant Singh; and accordingly, the issuing bank had, through the notifying bank as its agent, fulfilled its duties towards the customer and was entitled to debit the customer's account with the sum paid.

Case referred to:-

(1) *Equitable Trust Co. of New York* v. *Dawson Partners Ltd.* (1926) 27 Ll.L.Rep. 49, H.L.(E.).

The following cases were also cited in argument: *Alexander* v. *Sizer* (1869) L.R. 4 Exch. 102, *Bank Melli Iran* v. *Barclays Bank (Dominion, Colonial & Overseas)* [1951] 2 Lloyd's Rep. 367, *Chapman* v. *Smethurst* [1909] 1 K.B. 927, C.A., *Ireland* v. *Livingston* (1872) L.R. 5 H.L. 395, H.L.(E.), *Moralice (London) Ltd.* v. *E. D. & F. Man* [1954] 2 Lloyd's Rep. 526, *Onassis and Calogeropoulos* v. *Vergottis* [1968] 1 Lloyd's Rep. 294, C.A.; [1968] 2 Lloyd's Rep. 403, H.L.(E.), *Overseas Union Bank Ltd.* v. *Chua Teng Hwee* [1964] M.L.J. 165, *Rayner & Co. Ltd.* v. *Hambro's Bank Ltd.* [1943] K.B. 37; [1942] 2 All E.R. 694, C.A., *Rex* v. *International Trustee for the Protection of Bondholders Aktiengesellschaft* [1937] A.C. 500; [1937] 2 All E.R. 164, H.L.(E.), *Ross* v. *Associated Portland Cement Manufacturers Ltd.* [1964] 1 W.L.R. 768; [1964] 2 All E.R. 452, H.L.(E.), *Sassoon (M. A.) and Sons Ltd.* v. *International Banking Corporation* [1927] A.C. 711, P.C., *Skandinaviska Kreditakie-Bolaget* v. *Barclays Bank* (1925) 22 Ll.L.Rep. 523.

PRIVY COUNCIL APPEAL FROM SINGAPORE.

R. J. Parker Q.C. and *A. G. S. Pollock* for the appellant.

M. Mustill Q.C. and *A. P. Godwin* for the respondent.

Lord Diplock (delivering the judgment of their Lordships): The question in this appeal from the Court of Appeal in Singapore is whether the respondent (the "issuing bank") was entitled to debit the appellant (the "customer") with the sum of $139,496.43 paid by the Bank of Taiwan (the "notifying bank") to Messrs. Thai Lung Ship Machine Manufactory (the "beneficiary") under an irrevocable documentary credit opened by the issuing bank on the instructions of the customer. The credit was expressed to be subject to the Uniform Customs and Practice for Documentary Credits (1962 Revision).

The customer is a company carrying on business in Singapore. Its managing director was Balwant Singh. The credit was opened on the application of the customer to finance the purchase by a third party, at a price of 45,000 U.S. dollars, of a fishing vessel built in Taiwan. Payment under the documentary credit was to be made against presentation of a draft at sight, drawn on the customer and accompanied by signed commercial invoices in duplicate, and a certificate of origin, together with a document referred to under the heading "Special Notes" upon the back of the application for the credit.

This read as follows:

"A specific condition of this L/C is that a Certificate signed by Balwant Singh, holder of Malaysian Passport E-13276, certifying that the vessel has been built according to specifications and is in fit and proper condition to sail. In the absence of such a certificate, the L/C is not to be allowed 'negotiation'."

In June 1968 documents were presented to the notifying bank in Taipeh under the credit and payment of a sight draft for $45,000 U.S. made to the beneficiary. The only question which arises is as to whether the issuing bank were entitled to accept as conforming with the requirements of the letter of credit the certificate purporting to be signed by Balwant Singh which was presented. It was on paper bearing the letter-head of the customer and in the following terms:

"CERTIFICATE

Reference to the letter of credit No. 2693, U.S. Dollars Forty-Five Thousand, issued by the Bank of BANQUE DE L'INDOCHINE Singapore, covering shipment of one Fishing Boat 'M/V Wei Ching No. 6' Gross tonnage 80 Tons, Main Engine 5 Cylinders Diesel Engine, Horsepower 220, Built in wood. I, Balwant Singh, Holding the Malaysian Passport No. E-13276, certify that, the Fishing Boat had been inspected and built according to the specification and in the fit and proper conditions to sail.

I, agreed Messrs. Thai Lung Ship Machine Manufactory, No. 51 3rd Chung Cheng Road, Keelung, Taiwan, to Negotiate the Letter of Credit No. 2693 without any objection.

Yours faithfully,
I, Balwant Singh,
Passport No. E-13276
issued at 11th Nov. 1964
GIAN SINGH & CO. LIMITED,
Sd. Balwant Singh
DIRECTOR"

The customer brought an action against the issuing bank in which it claimed that it had been wrongly debited with the equivalent in Singapore currency of the 45,000 U.S. dollars paid to the beneficiary by the notifying bank. It contended —

(1) that the signature "Balwant Singh" on the certificate was a forgery, and

(2) that whether or not the signature was a forgery, the certificate did not conform with the terms of the documentary credit.

The Issue of Forgery

It is not disputed that when the certificate was presented to the notifying bank there was also shown to that bank a Malaysian Passport E-13276 in the name of Balwant Singh and purporting to bear his signature. Nor is it disputed that the notifying bank checked the signature on the certificate with the signature on the passport and found them to correspond. The passport, together with the certificate, had been produced by a Mr. Chew, who himself held a Singapore passport No. 16746. Mr. Chew was subsequently identified as a man with an unsatisfactory record who was no longer in Singapore.

At the trial in the High Court before Chua J., Balwant Singh gave evidence that he had not signed the certificate and that what purported to be his signature was a forgery. His own passport was produced. Its authenticity was not in doubt. It showed that he had not left Singapore at any time after 26th April 1967. More important, it bore the date of issue, 18th September 1964, whereas on the certificate the date of issue of passport No. E-13276 is stated by the signatory to be 11th November 1964. The evidence of the Assistant Controller of Immigration was that "it is not possible for another passport issued on another day to bear the same number". The inference is therefore that the passport No. E-13276 handed to the beneficiary by Mr. Chew was itself a forgery.

Chua J., however, found Balwant Singh to be an unsatisfactory witness. On a number of matters his evidence conflicted with that of the manager of the issuing bank, and where this was so the judge preferred the evidence of the latter. He also disbelieved Balwant Singh's story that he had not signed the certificate, though here there was no direct evidence to the contrary. His reasons for rejecting this part of Balwant Singh's evidence were:

(1) that no hand-writing expert had been called to say that the signature on the certificate was a forgery;

(2) that the certificate was on the customer's letterhead and Balwant Singh was not able to explain how this came about, and

(3) that he, the judge, himself thought the signature on the certificate was "much like" Balwant Singh's signature on his genuine passport and on the application for the documentary credit.

The Court of Appeal (Wee Chong Jin C.J., Tan Ah Tah J. and Choor Singh J.) unanimously reversed the finding of fact of Chua J. that the signature on the certificate was not a forgery. It has been contended before their Lordships that the judge's finding depended upon his assessment of the credibility of Balwant Singh and that an appellate court was not entitled to reverse this finding. Their Lordships agree that an appellate court is seldom justified in holding that the trial judge was wrong in disbelieving evidence given by a witness whom he had an opportunity of hearing and observing in the witness box — an advantage which the appellate court does not share. But, in the instant case, the only direct evidence as to whether the signature on the certificate was genuine or not was that of Balwant Singh. There was no evidence which conflicted with it except the judge's own impression that the signature on the certificate was much like a specimen of Balwant Singh's signature which was admittedly genuine. This, however, is a common feature of successful forgeries, and it is notoriously dangerous for judges, in the absence of expert evidence, to rely upon their own impression as to whether two signatures are by the same hand. Nevertheless if there had been no circumstantial evidence to support the bare denial by Balwant Singh that he had signed the certificate, it might well have been improper for the Court of Appeal to reverse the judge's finding. In their Lordships' view, however, there was powerful circumstantial evidence corroborating the direct evidence of Balwant Singh which it is clear the judge had overlooked in making up his mind as to the credibility of Balwant Singh's evidence on the issue of forgery. Although the judge accepted that the entries upon Balwant Singh's passport which was produced in court proved that he himself could not have gone to Taiwan to present the documents, this of itself was not inconsistent with his having provided Mr. Chew with that passport as well as with the certificate. What the judge failed to appreciate was the significance of the date, 11th November 1964, stated on the certificate as being the date of issue of the passport which Mr. Chew had handed to the notifying bank and which contained the purported signature of Balwant Singh that the notifying bank had found to correspond with the signature on the certificate. As their Lordships have already pointed out, the divergence between that date and the date of issue of Balwant Singh's genuine passport gives rise to the inference that the passport handed to the notifying bank, and the signature of Balwant Singh on it, was a forgery.

This together with the evidence as to Mr. Chew's movements in their Lordships' view provides strong corroboration of Balwant Singh's oral evidence that his purported signature on the certificate was also forged. Chua J.'s failure to appreciate this, vitiates his finding that Balwant Singh was lying when he denied that he had signed the certificate and justified the Court of Appeal in reversing it.

The Issue of Conformity

The fact that a document presented by the beneficiary under a documentary credit, which otherwise conforms to the requirements of the credit, is in fact a forgery does not, of itself, prevent the issuing bank from recovering from its customer monies paid under the credit. The duty of the issuing bank, which it may perform either by itself, or by its agent, the notifying bank, is to examine documents with reasonable care to ascertain that they appear on their face to be in

accordance with the terms and conditions of the credit. The express provision to this effect in Article 7 of the Uniform Customs and Practice for Documentary Credits does no more than re-state the duty of the bank at common law. In business transactions financed by documentary credits banks must be able to act promptly on presentation of the documents. In the ordinary case visual inspection of the actual documents presented is all that is called for. The bank is under no duty to take any further steps to investigate the genuineness of a signature which, on the face of it, purports to be the signature of the person named or described in the letter of credit.

The instant case differs from the ordinary case in that there was a special requirement that the signature on the certificate should be that of a person called Balwant Singh, and that that person should also be the holder of Malaysian Passport No. E-13276. This requirement imposed upon the bank the additional duty to take reasonable care to see that the signature on the certificate appeared to correspond with the signature on an additional document presented by the beneficiary which, on the face of it, appeared to be a Malaysian Passport No. E-13276 issued in the name of Balwant Singh. The evidence is that that is what the notifying bank had done when the certificate was presented. The onus of proving lack of reasonable care in failing to detect the forgery of the certificate lies upon the customer. In their Lordships' view, in agreement with all the members of the Court of Appeal, the customer did not succeed in making out any case of negligence against the issuing bank or the notifying bank which acted as its agent, in failing to detect the forgery.

Before the trial judge and in the Court of Appeal, the customer sought to infer absence of reasonable care from the fact that the purported signature of Balwant Singh on the certificate, appeared between the rubber-stamped words "Gian Singh & Co. Limited" above it and "Director" below it. This, they submitted, ought to have roused the suspicions of the notifying bank as to the genuineness of the signature, and to have caused that bank to refer back to the issuing bank and the issuing bank to refer back to the customer before making any payment under the credit. If this had been done, the fraud would have been detected and no payment made.

In their Lordships' view the presence of the rubber-stamped words above and below the holograph signature "Balwant Singh" would give no ground for suspicion unless they had the consequence of making the certificate one that did not conform with the requirements of the credit. But if it did not conform, the customer does not need to rely on any negligence by the issuing or notifying bank in failing to detect the forgery; for, independently of negligence, the issuing bank would be in breach of its contract with the customer if it paid the beneficiary on presentation of that document.

So this appeal ultimately turns upon the only question on which there was a difference of opinion in the Court of Appeal, *viz.*, whether the certificate, on the face of it, conformed with the requirements of the documentary credit.

The law to be applied in answering this question is clear and simple. It was stated succinctly by Viscount Sumner in *Equitable Trust Company of New York* v. *Dawson Partners Ltd* [1] at page 52 in the following passage from his speech:

> "It is both common ground and common sense that in such a transaction the accepting bank can only claim indemnity if the conditions on which it is authorised to accept are in the matter of the accompanying documents strictly observed. There is no room for documents which are almost the same, or which will do just as well. Business could not proceed securely on any other lines. The bank's branch abroad, which knows nothing officially of the details of the transaction thus financed, cannot take upon itself to decide what will do well enough and what will not. If it does as it is told, it is safe; if it declines to do anything else, it is safe; if it departs from the conditions laid down, it acts at its own risk."

This oft-cited passage has never been questioned or improved upon. The later cases, many of which are cited in the dissenting judgment of Choor Singh J. in the Court of Appeal, are but examples of the application of this principle by individual judges to the particular terms of the letter of credit and documents with which the particular case was concerned. Their Lordships do not find it necessary to refer to them in detail, nor to express any view as to whether on their particular facts each one of them was rightly decided.

So the question on which this appeal turns can be stated thus: Did the certificate presented to the notifying bank appear upon its face to be "a certificate signed by Balwant Singh, holder of Malaysian passport E-13276, certifying that the vessel has been built according to specifications and is in fit and proper condition to sail"?

This can be sub-divided into three questions: First, apart from the signature was it a certificate in the terms called for? Second, did it appear upon its face to be a certificate signed by Balwant Singh? Third, did it appear upon the face of the certificate and the passport presented with it that the signatory was the holder of Malaysian passport E-13276?

On the first question the customer took no point before the trial judge or before the Court of Appeal. Reliance was placed upon the form of the signature alone. Before their Lordships leave was sought to rely also on minor variances between the wording of the description in the credit of the certificate required and the wording of the certificate actually presented; such as the insertion in the latter of the words "Built in wood" as descriptive of the vessel, and the use of the singular "the specification" instead of the plural "specifications" which appears in the credit itself. In their Lordships' opinion it is too late for the customer to take these new points for the first time now. The relevance of minor variations such as these depends upon whether they are sufficiently material to disentitle the issuing bank from saying that in accepting the certificate it did as it was told. Their Lordships would not think it proper to decide issues of this kind without having the benefit of the opinion of the local courts upon the significance, if any, which would be attached by those who transact business in Singapore to particular minor variations in the precise words used in their transactions.

The third question their Lordships have already disposed of in dealing with the allegation of negligence

in failing to detect the forgery. It is the second that is the crucial question: Did the certificate appear on its face to be a certificate signed by Balwant Singh?

The customer's contention can be stated in a sentence. The signature was not that of Balwant Singh but of the customer on whose behalf Balwant Singh wrote his name upon the document in a representative capacity only.

Where a natural person's holograph signature to a document which creates contractual rights is associated with a reference to his being a director or manager of a corporate person, it may sometimes be a difficult matter to determine whether he is signing it in a personal capacity and the reference is merely descriptive of him or whether he is signing in a representative capacity only, and not in a personal capacity at all. In their Lordships' view there is no such difficulty in the instant case. Not only is the body of the certificate couched in the first person singular "I, Balwant Singh", but even more significant, at the end of the certificate, after the words "Yours faithfully" and thus as much part of the signature itself as the rubber-stamped words "Gian Singh & Co. Limited" and "Director", are the type-written words: "I, Balwant Singh, Passport No. E-13276 issued at 11th November 1964". This, in their Lordships' view, puts it beyond doubt that the rubber-stamped words are to be understood as words of description only.

Even apart from this, however, their Lordships agree with the majority of the Court of Appeal that the only requirement of the documentary credit is that the certificate should bear the actual holograph signature of Balwant Singh. It does not require that the certificate shall be the certificate of Balwant Singh, but merely that whoever else the certifying party might be the certificate should be signed by him. It was. So the literal requirement of the credit was complied with. There was no reason discernible upon a mere reading of the terms of the credit for construing the requirement that the certificate should be signed by Balwant Singh otherwise than literally. The notifying bank did as it was told; so the issuing bank is safe.

The appeal must be dismissed with costs.

Appeal dismissed.

Solicitors: *Linklaters & Paines; Parker Garrett & Co.*

SINGAPORE REPORTS

ISMAIL BIN U.K. ABDUL RAHMAN v. PUBLIC PROSECUTOR

[C.C.A. (Wee Chong Jin C.J., Winslow and Choor Singh JJ.) May 13, 1974]

[Singapore — Criminal Appeal No. 8 of 1973]

Criminal Law and Procedure — Murder — Defence of intoxication — Intention to kill — Cautioned statement — Criminal Procedure Code, (Cap. 113) Sch. E — Evidence — Confession — Retraction — Alibi — Rebuttal — Accomplice or interested witness — Penal Code, ss. 85 and 302.

Penal Code, ss. 85 and 302 — Murder — Defence of intoxication.

The appellant was convicted for the murder of one Karubbun Velusamy, a male Indian who died of severe head injuries. The prosecution relied on circumstantial evidence in the testimony of two witnesses, Muthukamaru and Mohamed Misha and on a cautioned statement (amounting to a confession) made by the appellant to the police shortly after his arrest 16 days later. At the trial, the appellant retracted his confession and raised the defence of an alibi. The trial judges accepted the evidence of the confession as voluntary and true, and rejected his defence.

On appeal, the appellant alleged, *inter alia:* (1) that the evidence of Mohamed Misha should have been rejected in the absence of corroboration as he had been arrested in connection with the murder before the appellant was arrested and was later released after he had identified the appellant at an identification parade. As such, he was an accomplice or at least an interested witness;

(2) that the cautioned statement should not have been given any weight because the officer recording it was also the investigating officer and therefore had an interest in the matter;

(3) that no weight ought to have been attached to the cautioned statement which was a confession as it had been retracted;

(4) that the appellant's defence of alibi had been inadequately considered in that as the prosecution had failed to call evidence in rebuttal of the alibi, the trial judges, even if they disbelieved the appellant's evidence, should have considered whether it was probable that the appellant was somewhere else at the time of the attack on the deceased;

(5) that the trial judges had failed to give adequate consideration to the fact that the appellant was drunk at the time of the attack and accordingly was incapable of forming the intention to kill.

Held: (1) there was no evidence at all on which the witness Misha could be considered an accomplice and thus no corroboration was required;

(2) there was no requirement in the Rules in Schedule E of the Criminal Procedure Code that an accused person should be formally charged by a police officer unconnected with the case;

(3) an accused person could be convicted on his own confession, even if it was retracted, if the court was satisfied that it was made voluntarily and that it was true and there was no requirement of corroborative evidence to support it;

(4) the appellant's alibi was based entirely on his own evidence, and was rightly rejected as it was disbelieved by the trial judges;

(5) there was insufficient evidence to support the defence of intoxication laid down in section 85 of the Penal Code. The bare statement of the appellant that he was drunk was inadequate to negative the intention to kill;

(6) there was ample evidence before the trial judges to establish beyond a reasonable doubt that the appellant had murdered the deceased and the appeal was therefore dismissed.